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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

JOHN BARR, PETITIONER,

v.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
CUSTOMS AND PATENT APPEALS

BRIEF FOR PETITIONER

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New York, November 27, 1944.

INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Statutes Involved	2
Statement	2
Specification of Errors to Be Urged	7
Summary of Argument	8
Argument	10
I—The Secretary of the Treasury possesses no power under Section 522(c) to disregard or nullify buying rates determined and certified by the Federal Reserve Bank, and his instructions contained in Treasury Decision 50134 are void	10
II—The decision of the Collector pursuant to instruction of the Secretary to liquidate involved entry at "official" rate of exchange is subject to judicial review	16
III—Both "free" and "official" buying rates determined by Federal Reserve Bank under Section 522(c) are final and conclusive and must be given force and effect	21
IV—The imported woolens were purchased and paid for with pounds sterling convertible at the "free" rate of exchange	30
Conclusion	32
Appendix	33

CASES CITED

Campbell v. United States, 107 U. S. 407	18
Cramer v. Arthur, 102 U. S. 612	21, 22
Greely v. Thompson, 10 How. 225, 234	20
Hadden v. Merritt, 115 U. S. 25	22
Morrill v. Jones, 106 U. S. 466	20
Muller v. Norton, 132 U. S. 501, 508	28

	PAGE
Staedtler v. United States, 25 C. C. P. A. (Customs), 136, 137	22
Tracy v. Swartwout, 10 Pet. 80, 95	20
United States v. Bush & Co., 310 U. S. 371, page 380	29
United States v. Klingenberg, 153 U. S. 93	22
United States v. Lucius Beebe & Sons, 122 Fed. 762 of 1903	17
United States v. Oregon & California R. Co., 164 U. S. 526, 541	28
United States v. Parkhurst, et al., 12 Ct. Cust. Appls. 370, 372 of 1924	17, 18
United States v. Whitridge, 197 U. S. 135 of 1905	23
Waite v. Macy, 246 U. S. 606, 608	20

STATUTES

Act of March 2, 1799, Sec. 61 (1 Stat. 673)	21
Act of August 5, 1861 (12 Stat. 292)	18
Act of June 10, 1890, Sec. 14 (26 Stat. 138)	17
Act of August 27, 1894, Sec. 25 (28 Stat. 552)	22
Act of May 27, 1921, Sec. 403 (d) (42 Stat. 17)	14, 21, 23
Judicial Code, Sec. 195, U. S. C., Title 28, Sec. 308	2
Tariff Act of 1913, Sec. N (38 Stat. 187)	17
Tariff Act of 1922, Sec. 522 (c) (42 Stat. 974)	23
Tariff Act of 1930	
Section 502	20
Section 514	2, 5, 6, 9, 15, 16, 18, 20
Section 522 (c)	2, 5, 7, 8, 9, 11, 13, 14, 21, 23, 25, 26, 27, 28, 29, 30
U. S. Revised Statutes, Sec. 1, U. S. C., Title 1	
Sec. 1	27, 28
U. S. Revised Statutes, Sec. 2903	21, 23

MISCELLANEOUS

Customs Regulations 1874, Article 993	21
Customs Regulations, 1937	
Article 822 (d)	15
Article 1402	4
Treasury Decision 50134	5, 10, 13, 14, 15, 20
Treasury Decision 50146	13
Senate Report No. 16, 76th Con., 1st Sess.	14

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Opinions Below

The opinion of the Customs Court (R. pp. 134-142) is reported in C. D. 801, "Treasury Decisions" advance sheets, August 12, 1943, Volume 79, No. 7, page 14. The opinion of the Court of Customs and Patent Appeals (R. pp. 145-154) is reported in 143 Fed. (2d), 132, C. A. D. 279, "Treasury Decisions" advance sheets, July 6, 1944, Volume 79, No. 54, page 28.

Jurisdiction

The judgment of the Court of Customs and Patent Appeals was entered May 22, 1944 (R. p. 153). The petition for a writ of certiorari was filed on July 26, 1944, and was

granted on October 9, 1944 (R. p. 155). Jurisdiction of this court is invoked under Section 195 of the Judicial Code as amended (U. S. C., Title 28, Section 308).

Statutes Involved

The statutes involved are Section 522 of the Tariff Act of 1930 (46 Stat., 739, U. S. C., Title 31, Section 372) (Appendix p. 33), and Section 514 of said Tariff Act of 1930 (46 Stat., 734, U. S. C., Title 19, Section 1514) (Appendix p. 34).

Statement

Section 522 of the Tariff Act of 1930 prescribes the statutory method for determination of values of foreign currency for assessment and collection of duties upon imported merchandise. Subsection (a) thereof provides that the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value, and that the values of standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly.

Subsection (b) provides that for the purpose of assessment and collection of duties upon imported merchandise conversion of foreign currency into currency of the United States shall be made at the values proclaimed by the Secretary. †

Subsection (c) of said Section 522 provides that if the value defined by subsection (a) has not been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion of foreign currency shall be made at a value

measured by such buying rate. Such buying rate is defined to be the buying rate for cable transfers payable in the foreign currency to be converted and is required to be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who in turn "shall make it public at such times and to such extent as he deems necessary."

The merchandise consists of woolen fabrics exported from the United Kingdom to the United States on May 3, 1940, and invoiced and appraised in pounds sterling. (Stipulation, pars. 1 & 2, R. p. 88.)

On September 3, 1939, coincident with the outbreak of war, the United Kingdom adopted certain regulations which provided that exchanges of dollars and pounds sterling in the United Kingdom should thereafter be made only through the Bank of England or an authorized dealer, i.e., a person authorized by the British Treasury to deal in foreign currency (Stipulation, paragraph 3—R. p. 88; Exhibit 1, R. pp. 92, 98; offered, R. p. 41; Exhibit 2, R. pp. 103, 105, offered, R. p. 41; Exhibit 3, R. pp. 106, 112, offered R. p. 41). The rates fixed by the British Treasury under said regulations for exchange of dollars and pounds sterling in the United Kingdom were from September 3, 1939 to September 13, 1939, \$4.06 per pound sterling; from September 14, 1939 to January 7, 1940, \$4.04 per pound sterling; and from January 8, 1940 to the present time, \$4.035 per pound sterling (Stipulation, paragraph 3—R. p. 89).

Effective March 25, 1940, the British Government required that payment for certain specified exports to the United States be made in either United States dollars or with pounds sterling purchased from the Bank of England or an authorized dealer of such Bank at the fixed British "official" rate of exchange (Stipulation, paragraph 4—R. p. 89; Exhibit 4—R. p. 120; offered R. p. 42). The exports specified in such order were whiskey, furs, tin,

rubber and jute in various forms. Woolens such as those included here were not within the scope of this regulation.

Prior to March 25, 1940, the Federal Reserve Bank, in determining and certifying buying rates of exchange under Section 522 (c) took no cognizance of the British "official" fixed rate of exchange and determined and certified one buying rate of exchange, to wit, the "free" or uncontrolled buying rate for cable transfers in the New York market (Stipulation, paragraph 6—R. p. 89). Beginning on March 25, 1940, however, when the British Government required payment for whiskey, furs, tin, rubber, and jute products, exported to the United States, to be made in dollars or in pounds purchased at the British "official" fixed rate of exchange, the Federal Reserve Bank began to certify under Section 522 (c) two buying rates of exchange for pounds sterling (Stipulation, paragraph 8—R. p. 90; Exhibit 7—R. p. 130, offered, R. p. 42). One of such rates was denominated "free" which the Bank stated represented the single buying rate it had theretofore certified, and the second and higher rate was called "official", the Bank stating this was the rate fixed by or on behalf of the British Treasury (Exhibit 6—R. p. 128, offered, R. p. 42).

Customs regulations in effect on the date of exportation of the involved woolens required buying rates certified by the Federal Reserve Bank to be furnished to customs officers by the Customs Information Exchange¹ for purposes of conversion of currency (Stipulation, paragraph 11—R. p. 91). Pursuant to such regulations, the said Customs Information Exchange furnished daily to custom officers, to customs brokers, and to importers concerned a statement of buying rates certified by the Federal Reserve Bank (Stipulation, par. 11, R. p. 91). On the date of

¹ The Customs Information Exchange is used "by the customs service as a medium to disseminate information". Customs Regulations, 1937, Art. 1402.

exportation of the involved woollens the rates so furnished were, for pounds sterling, a "free" buying rate of \$3.475138 and an "official" buying rate of \$4.035 (Exhibit 8—R. p. 132, offered, R. p. 43). Each of these rates varied by more than 5 per centum from the value of \$3.2397 estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury for pounds sterling under Section 522 (a) and (b) (Stipulation, paragraph 9—R. p. 90).

In Treasury Decision 50134 of April 15, 1940, addressed to Collectors of Customs and others concerned, the Secretary of the Treasury referred to the fact that the Federal Reserve Bank of New York was certifying under Section 522 (c) a "free" rate and an "official" rate for pounds sterling and directed that for the purpose of assessment and collection of duties upon imported merchandise invoiced in pounds sterling, customs officers should make all conversions on the basis of the rate for pounds sterling designated "official". It was further stated that until further notice only the said "official" rate would be published in "Treasury Decisions". (Treasury Decision 50134, "Treasury Decisions", Volume 75, page 370; 5 Federal Register, 1447; Appendix, page 35).

The woollens herein were purchased and paid for with pounds sterling purchased in the New York market for cable transfers and were not obtained directly or indirectly from the Bank of England or an authorized dealer of such Bank (Stipulation, par. 10, R. p. 90). On liquidation of the entry the Collector of Customs at New York, pursuant to said instructions of the Secretary, converted the pounds sterling of the invoice into currency of the United States for assessment and collection of tariff duties at the "official" rate of exchange of \$4.035 (Stipulation, paragraph 12—R. p. 91).

Section 514 of the Tariff Act of 1930 grants to importers and other interested parties the right to file pro-

test against all decisions of Collectors of Customs, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character within the jurisdiction of the Secretary of the Treasury.

Petitioner filed protest against the Collector's action under said Section 514, claiming the currency of his invoice should have been converted at the "free" rate of exchange, which, on the day of exportation herein, was \$3.475138 (R. p. 6). The Customs Court, in sustaining petitioner's protest, held that under prior decisions of this court both the "free" and "official" buying rates for pounds sterling certified by the Federal Reserve Bank were final and conclusive upon all parties; that under the facts of this case both such rates had separate application and must be given effect in accordance with the nature of the merchandise imported; that the certification by the Federal Reserve Bank left no discretion to the Secretary as to whether he should accept the rates; and that, while the Secretary could direct Collectors to use either one of two rates certified, such instruction would not preclude judicial inquiry to determine which of the two rates certified was applicable (R. pp. 134-142).

The Court of Customs and Patent Appeals, in reversing this decision, held that as the Secretary of the Treasury had published a buying rate of exchange certified by the Bank, such publication on its face conformed to the law, was final and conclusive, and was not subject to judicial inquiry as to its correctness (R. p. 152). That court stated in the course of its opinion that Section 522 (c) contemplates the determination of a single buying rate of exchange (R. p. 152).

Specification of Errors to Be Urged.

The Court below erred:

1. In holding that the instruction of the Secretary of the Treasury to Collectors of Customs to use only the "official" rate of exchange in converting all pounds sterling invoices on its face conformed to the law and was, therefore, conclusive and binding.

2. In failing to hold that the Secretary of the Treasury possesses no discretionary or other power under said Section 522 (c) to disregard or nullify buying rates determined and certified by the Federal Reserve Bank under that section.

3. In holding in effect that the decision of the Collector of Customs, pursuant to instruction of the Secretary of the Treasury to convert the pounds sterling of the involved invoice at the "official" rate of exchange instead of at the "free" rate of exchange, was not subject to judicial review.

4. In failing to hold that buying rates of exchange determined and certified by the Federal Reserve Bank under Section 522 (c) of the Tariff Act of 1930 are binding and conclusive on all parties, including importers, customs officers, and the Secretary of the Treasury.

5. In failing to consider the history of currency legislation and prior decisions of this court thereunder.

6. In failing to hold that buying rates of exchange determined by the Federal Reserve Bank under Section 522 (c) must be given effect in any instance where import transactions are established to be in currency for which such buying rates have been determined and certified.

7. In holding that the "official" rate of exchange was the all-inclusive buying rate of pounds sterling and was, therefore, the rate properly published by the Secretary of the Treasury and used by the Collector of Customs in converting the currency of the invoice at bar.

8. In failing to hold that the Collector of Customs should have converted the currency of the involved invoice at the "free" buying rate of exchange determined and certified by the Federal Reserve Bank for the date of exportation herein.

9. In reversing the judgment of the Customs Court.

Summary of Argument

I

Section 522 (c), Tariff Act of 1930 vests in the Federal Reserve Bank the discretionary power to determine buying rates of exchange. The Secretary of the Treasury possesses the purely ministerial function of publishing the rates determined by the bank.

Congress has defined the buying rate, and its direction that the buying rate determined by the Federal Reserve Bank shall be used in all cases where applicable is mandatory. The refusal of the Secretary to publish the "free" rate for pounds sterling duly certified to him and his direction to ignore and give no effect to such rate cannot defeat this plain Congressional mandate.

Said Section 522 (c) requires that all rates determined and certified to the Secretary by the Federal Reserve Bank shall be made public. The failure of the Secretary to publish the "free" rate of exchange and his direction to customs officers to give force and effect only to the "official" rate of exchange shows on its face that the Secretary's action did not conform to the law and is hence illegal.

II

The fact that the Collector liquidated the involved entry at the wrong rate of exchange pursuant to instruction of the Secretary does not prevent judicial review of such illegal action.

Section 514 of the Tariff Act of 1930 gives importers the right to protest and obtain subsequent judicial review of all decisions of collectors including the legality of all orders and findings entering into the same. Said Section 514 gives the express right of protest and review and the fact that the collector failed to use the proper rate of exchange in pursuance of instructions of the Secretary cannot defeat the right which Congress has given.

III

The history of prior currency legislation and decisions of this court thereunder establish that conclusive force and effect has been extended to findings of values or rates of exchange by the fact-finding body to which Congress has delegated such power. In the case at bar, the Congress delegated such power to the Federal Reserve Bank and rates of exchange determined by that official instrumentality are final and conclusive on all parties and must be given full force and effect.

Both the "free" rate and the "official" rate determined and certified by the Federal Reserve Bank have vitality and force and each is tied up with certain classes or types of merchandise—the "official" rate with whiskey, furs, tin, rubber and jute products, and the "free" rate with all other merchandise, including the imported woollens.

While Section 522 (c) refers to "the buying rate", it is well settled that where necessary to effectuate the legislative intent words importing the singular only will be applied to the plural of persons and things. The Congress

has authorized the Federal Reserve Bank to determine buying rates of exchange to carry out the policy of Congress, and the exercise of the judgment of such bank that certification and application of both a "free" rate and an "official" rate for pounds sterling was necessary to effectuate the Congressional intention is final.

If, however, the court shall determine that the Federal Reserve Bank had power to determine and certify only one rate of exchange, then the rate which must be given force and effect is the "free" and uncontrolled buying rate of exchange.

IV

The imported woolens were purchased and paid for with pounds sterling convertible at the "free" rate of exchange, and the involved invoice currency should accordingly have been converted by the Collector at the "free" rate determined and certified by the Federal Reserve Bank for the date of exportation herein, to wit, \$3.475138.

ARGUMENT

I

The Secretary of the Treasury possesses no power under Section 522 (c) to disregard or nullify buying rates determined and certified by the Federal Reserve Bank, and his instructions contained in Treasury Decision 50134 are void.

The Court of Customs and Patent Appeals seems to have rested its decision upon the finding that as the Secretary of the Treasury published in "Treasury Decisions" the "official" rate which had been certified by the Federal Reserve Bank, the publication on its face conformed to the law and was conclusive and binding as to its correctness.

and as the Collector followed the Secretary's instruction to use only this rate his decision must be sustained. In so holding that court completely ignored the fundamental proposition that Section 522 (c) commits to the Federal Reserve Bank determination of rates of exchange, and that the authority and duty of the Secretary of the Treasury thereunder is the purely ministerial one of making public buying rates determined by the Federal Reserve Bank. Section 522 reads as follows:

"SEC. 522. CONVERSION OF CURRENCY.

(a) **VALUE OF FOREIGN COIN PROCLAIMED BY SECRETARY OF TREASURY.**—Section 25 of the Act of August 27, 1894, entitled: 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' as amended, is reenacted without change as follows:

'SEC. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year.'

(b) **PROCLAIMED VALUE BASIS OF CONVERSION.**—For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of the enactment of this Act, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of section 25 of such Act of August 27, 1894, as amended, for the quarter in which the merchandise was exported.

(c) **MARKET RATE WHEN NO PROCLAMATION.**—If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market

at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange."

The above wording is clear and unambiguous. It provides that foreign currency shall be converted into currency of the United States at the value estimated quarterly by the Director of the Mint and proclaimed by the Secretary of the Treasury. If such proclaimed value, however, varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion of the currency is required to be made at a value measured by such buying rate.

The requirement that conversion be made at a value measured by the buying rate is mandatory in any case where the variation of 5 per centum or more from the proclaimed value is found to exist. Both the "free" and "official" rates herein vary by more than 5 per centum from the proclaimed value of the pound sterling.

Congress defined the buying rate to mean the buying rate for cable transfers payable in the foreign currency to be converted. The power to determine such buying rates was vested solely in the Federal Reserve Bank in the lan-

guage "shall be determined by the Federal Reserve Bank of New York". Section 522 (c) further specifies certain factors which the Federal Reserve Bank "may in its discretion" take into consideration in determining the buying rate.

The statute makes an important distinction between the duties of the Secretary of the Treasury under subdivisions (b) and (c). Subdivision (b) provides that conversion of currency thereunder "shall be made at the values proclaimed by the Secretary of the Treasury." Under subdivision (c), however, the statute directs that conversion of currency shall be made at a value measured by the buying rate which "shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public", etc. Unlike subdivision (b), subdivision (c) does not limit the value or rate to be applied to that proclaimed or published by the Secretary. It clearly means that the buying rate to be used shall be that determined by the Federal Reserve Bank. This must apply, whether or not the rate determined and certified to the Secretary is made public by him. Certainly the Secretary can not overcome the plain provisions of existing law by withholding publication in "Treasury Decisions" of a buying rate determined by the Federal Reserve Bank or by directing customs officers to use some other and different rate.

The record establishes that both a "free" rate and an "official" rate for pounds sterling were determined by the Federal Reserve Bank and certified to the Secretary daily. In Treasury Decision 50134 the Secretary referred to this fact and stated his intention thereafter to publish only the "official" rate. His subsequent publications conformed to this statement, as exemplified in Treasury Decision 50146 (Treasury Decisions, Vol. 75, p. 388, Appendix, p. 36). Said Treasury Decision 50146 sets forth only the "official" rate of exchange for the date of exportation herein,

May 3, 1940, and directs that such rate shall be used pursuant to the Secretary's instructions in Treasury Decision 50134. The refusal of the Secretary to publish the "free" rate and his direction to customs officers to give such rate no force and effect shows on its face that his instruction and subsequent publication of rates did not conform to the law.

The Congress clearly intended that buying rates determined under Section 522 (c) should be made public when it provided that the buying rate determined by the Federal Reserve Bank should be certified daily to the Secretary of the Treasury, "who *shall* make it public * * *". This purpose is made manifest, if resort may properly be made to the views expressed by the Committee on Finance in proposing the adoption of Section 403 of the Emergency Tariff Act of 1921 (42 Stat. 17), the antecedent of the present law. The Committee said (Senate Report No. 16, 76th Congress, 1st Session, p. 16):

"The Federal reserve bank of New York is authorized to determine the buying rate and the proposed amendment provides that the buying rate shall be the buying rate for cable transfers payable in the foreign currency to be converted. The section requires the Federal reserve bank of New York to certify the exchange rates to the Secretary of the Treasury daily *and requires the Secretary to make such rates public for the use of the collectors and appraising officers in assessing duties.*" (Italics ours.)

The Congress imposed no limitation upon its direction to publish rates certified by the Federal Reserve Bank, the Secretary being authorized only to select the medium or means of publication in the language "make it public at such times and to such extent as he deems necessary". This latter provision does not, of course, modify or alter in any degree the flat direction of the Congress that the currency shall be converted at the applicable buying rate. Such a ministerial function can not be broadened into a

discretionary power of the Secretary of the Treasury to select or suppress or vary buying rates determined by the Federal Reserve Bank in accordance with the statute. The sole and only function of the Secretary is to make such rate or rates as are certified daily to him by the Federal Reserve Bank "public at such times and to such extent as he deems necessary".

The "free" rate of exchange, determined and certified by the Federal Reserve Bank, was furnished to the Collector of Customs by the Customs Information Exchange in compliance with Article 822 (d) of the Customs Regulations of 1937 which provided:

"Rates of exchange for the principal foreign currencies as certified daily by the New York Federal Reserve Bank will be furnished daily by the customs information exchange to customs officers in the number of copies required, and liquidation will not be made until such Federal reserve bank rates are received. In special cases, or where a rate of currency does not appear on the daily list furnished, the collector will request such rate from the customs information exchange. * * *

See stipulation, paragraph 11 (R. p. 91; Exhibit S, R. p. 132, offered, R. p. 43).

The Secretary's instruction to collectors in Treasury Decision 50134 to use only the "official" rate made no reference to the above quoted customs regulation.

The fact that the Collector of Customs liquidated the involved entry at the "official" rate of exchange pursuant to instruction of the Secretary, does not make his action final and conclusive and prevent judicial review. The Court of Customs and Patent Appeals held that since the Collector's action conformed to the Secretary's instruction, it must be sustained. In so holding, that court gave no consideration to the express provisions of Section 514 of the Tariff Act of 1930 providing for judicial review in just such instances.

II

The decision of the Collector pursuant to instruction of the Secretary to liquidate involved entry at "official" rate of exchange is subject to judicial review.

Express provisions of existing law clearly provide for a review of the Collector's action herein, including the validity of the order of the Secretary upon which the Collector's decision was based.

Section 514 of the Tariff Act of 1930, set forth in full in the Appendix at page 34 hereof, provides in part as follows:

" * * * all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), * * * and his liquidation or reliquidation of any entry, * * * shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction * * * shall, within sixty days after, * * * file a protest in writing with the collector * * *."

This statute clearly makes all decisions of Collectors as to the rate or amount of duty chargeable upon imported merchandise subject to protest. The statute further specifies that such protest may be directed against the legality of orders and findings entering into decisions of the Collector. The instruction of the Secretary to use only the "official" rate of exchange entered into the decision of the Collector and the statute makes the Collector's action based thereon subject to protest and subsequent review by

the Customs Court. In a case arising under the Tariff Act of 1913 (38 Stat. 187), the Court of Customs and Patent Appeals construed the protest section of that act as follows:

"As the statutes confer on the importer only, the right to protest against the *decision of the collector* fixing the rate and amount of duties, chargeable upon imported merchandise, it follows that he has no right to protest against a liquidation which is not the decision of the collector but that of the Secretary. To preserve the importer's right of protest, therefore, *liquidations ordered by the Secretary must be regarded as decisions of the collector*. To hold otherwise would leave the importer remediless against every reliquidation ordered by the Secretary. Reliquidations made by the collector on orders by the Secretary are collectors' decisions; and such liquidations, like any other liquidation made by the collector, may be questioned by protest." (Second italics ours.)

United States v. Parkhurst, et al., 12 Ct. Cust. Appls. 370, 372, of 1924.

In *United States v. Lucius Beebe & Sons*, 122 Fed. 762, of 1903, the Circuit Court of Appeals for the First Circuit, in considering the opposition raised to the jurisdiction of the Board of General Appraisers (now the Customs Court) to pass upon rulings by the Secretary of the Treasury under Section 14 of the Act of June 10, 1890 (26 Stat. 138), said in part, at pages 769, 770:

"The United States rest on the words 'decision of the collector,' found in section 14, and they claim that in the case at bar the 'decision' was not that of the collector of Boston, but of the Secretary of the Treasury. This is a narrow construction of the expression, because the ultimate tribunal which reliquidated was no, the Secretary, but the collector, so that at common law mandamus would lie only against the latter, and not against the former. This position, moreover, begs the question, because, *if the action of the Secretary was unlawful, as we hold it was, the*

collector could rest nothing done by him on that action, and whatever he did was his own." (Italics ours.)

The Court of Customs and Patent Appeals in the *Parkhurst* case, *supra*, and the Circuit Court of Appeals in the *Beebe* case, *supra*, came to the conclusion that a decision of the Collector was subject to review when based upon an instruction of the Secretary, despite the fact that the Act of 1913 and the Act of 1890, there under consideration, did not include the provision found in the existing protest Section 514 "including the legality of all orders and findings entering into the same".

It would be a curious thing if Congress, after clearly defining the right of an importer to protest all decisions of the Collector, including the legality of all orders and findings entering into such decisions, had empowered the Secretary to defeat totally the right which Congress had granted. The law gives the right and such right cannot be defeated by an instruction of the Secretary which ignores the plain terms of the law. In *Campbell v. United States*, 107 U. S. 407, this court passed upon the power of the Collector to act under explicit directions of the Secretary of the Treasury under the fourth section of the Act of August 5, 1861 (12 Stat. 292). The court said in part, at pages 410-412:

"It would be a curious thing to hold that Congress, after clearly defining the right of the importer to receive drawback upon subsequent exportation of the imported article on which he had paid duty, had empowered the Secretary by regulations, which might be proper to secure the government against fraud, to defeat totally the right which Congress had granted. If the regulations of themselves worked such a result, no court would hesitate to hold them invalid as being altogether unreasonable."

"But the regulations in this case are not unreasonable. Nor do they interpose any obstacle to the full assertion and adjustment of plaintiffs' right. It is the order of the Secretary of the Treasury forbidding the

collector to proceed under these regulations or in any other mode, which is the real obstacle. Is that order a defense to this action? Can the Secretary, by this order, do what he could not do by regulations, repeal or annul the law? Can he thus defeat the law he was appointed to execute, by making regulations and then, by ordering his officers not to act under them, and not to act at all, place himself above the law and defy it?"

"The Court of Claims makes the mistake of supposing that the claim is founded on the regulations of the Secretary of the Treasury. This view cannot be sustained. It is the *law* which gives the right, and the fact that the customs officers refuse to obey these regulations cannot defeat a right which the Act of Congress gives."

"It is an error to suppose that the officers of customs, including the Secretary, are in regard to this law created a special tribunal to ascertain and decide conclusively upon the right to drawback. Their function is entirely ministerial. They are authorized to pass upon no question essential to the claimant's right so as to conclude him in a court of competent jurisdiction. From the moment he presents his sworn entry, they simply ascertain quantities, identify and mark packages, accept bonds and sureties, see that the exported article leaves the port in the ship. These and like duties being discharged, it is the collector's duty, a mere ministerial function, to give the certificate of drawback. The amount of it is fixed at seventeen cents per hundred pounds by the regulation; he has nothing to do but to calculate the amount at that rate on the number of pounds shipped. He exercises no judicial or *quasi* judicial function. He concludes nobody's rights, and has no power to do so. The rights which the law gives cannot be defeated by his refusal to act, nor by his decision that no drawback was due.

"Neither the Act of Congress, nor any rule of construction known to us, makes the claimant's right, when the facts on which it depends are clearly established, to turn upon the view which the collector or the Secretary or both combined, may entertain of the law

upon that subject, and much less upon their arbitrary refusal to perform the services which the law imposes on them."

See also:

Morrill v. Jones, 106 U. S. 466;

Waite v. Macy, 246 U. S. 606, 608.

It is true that Section 502 of the Tariff Act of 1930 (46 Stat. 731, U. S. C., Title 19, Sec. 1502) provides in part:

"(c) *Duties of Customs Officers*.—It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs".

However, that section cannot operate to limit or defeat the plain Congressional intention to subject all decisions of Collectors which affect the rate or amount of duties to protest and subsequent review by the Customs Court. *Tracy v. Swartwout*, 10 Pet. 80, 95; *Greely v. Thompson*, 10 How. 225, 234.

While, therefore, the instruction of the Secretary to Collectors of Customs, as set forth in Treasury Decision 50134, to use only the "official" buying rate in converting all pounds sterling invoices may be binding upon the Collector, such order enters into the case at bar only as an order or finding "entering into" the decision of the Collector and is fairly comprehended by section 514 of the Act of 1930.

The Collector, acting pursuant to such instruction, liquidated the entry at bar using the wrong rate of exchange, thereby increasing the amount of duties payable on the imported woolsens. Clearly, if Section 514 is to be given

any force and effect, protest must lie against such decision of the Collector, including the legality of the order of the Secretary entering into the same.

III

Both "free" and "official" buying rates determined by Federal Reserve Bank under Section 522 (c) are final and conclusive and must be given force and effect.

Section 522 (c) of the Tariff Act of 1930, first enacted as Section 403 of the Emergency Tariff Act of 1921 (42 Stat. 17), introduced a wholly new basis for conversion of foreign currency for tariff purposes, namely, the New York market rate determined by the Federal Reserve Bank.

From 1789 to 1873 the values of foreign coins and currencies for customs computations were established by acts of Congress (See Table 1, Appendix, p. 39). In Section 61 of the Act of March 2, 1799 (1 Stat. 673), a provision was added, empowering the President to make regulations for conversion of currency in cases where the invoice was made out in a depreciated currency. Such regulations provided that a consular certificate should be attached to the invoices stating the value of the currency in standard gold dollars of the United States. Customs Regulations 1874, Article 993 (Appendix, p. 38). A consular certificate of value of a depreciated currency under this regulation and statute was held to be conclusive and binding on all parties. *Cramer v. Arthur*, 102 U. S., 612. Said Section 61 of the Act of 1799 was incorporated into the Revised Statutes of the United States with only formal changes as Section 2903 and remained in force until expressly repealed by Section 403 (d) of the Act of May 27, 1921 (42 Stat. 17).

From 1873 until 1894, statutes in force provided that conversion of foreign currency for duty purposes should be

made on the basis of the pure metal value of the foreign coin in circulation in various foreign countries as expressed in United States money (See Table 2, Appendix, p. 39). Such values were required to be estimated by the Director of the Mint and to be proclaimed by the Secretary of the Treasury. The values so determined were held to be final and conclusive and not subject to collateral attack or judicial review. *Cramer v. Arthur*, 102 U. S. 612; *Hadden v. Merritt*, 115 U. S. 25; *United States v. Klingenberg*, 153 U. S. 93.

The foregoing cases did not hold that the Secretary of the Treasury had power to modify, reject, or control in any way the estimate as to the metal value of a foreign currency made by the Director of the Mint. It seems to have been implicit in the statutory system that the determination of the Director of the Mint would be conclusive upon everyone, including the Secretary of the Treasury, and that the Secretary possessed merely the ministerial function of proclaiming the values so determined. In *Stadttler v. United States*, 25 C. C. P. A. (Customs), 136, 137, the Court of Customs and Patent Appeals said of this system:

"the only duty required of the Secretary of the Treasury is the ministerial one of proclaiming the values so 'estimated'."

Section 25 of the Act of August 27, 1894 (28 Stat 552) reenacted the provision for determination of pure metal value of foreign coin by the Director of the Mint and proclamation thereof by the Secretary of the Treasury and added a new provision which gave to the Secretary of the Treasury authority to order reliquidation of any entry at a value different from the proclaimed value

"whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less"

than such proclaimed value. This proviso was recognized as vesting the Secretary of the Treasury with discretionary power. *United States v. Whitridge*, 197 U. S. 135, of 1905.

Section 522 (c) of the Tariff Act of 1930 is a re-enactment of Section 522 (c) of the Tariff Act of 1922 (42 Stat. 974), and, as stated, was first enacted as Section 403 of the Act of May 27, 1921 (42 Stat. 17).

Said Section 403 of the Act of 1921 omitted the above quoted proviso to the Act of 1894, expressly repealed Revised Statutes, Section 2903, which authorized the President to regulate conversion of depreciated currencies, and introduced a wholly new method of currency conversion whereby Congress substituted for these previous methods of determining exchange values by the Secretary and the President a determination by the Federal Reserve Bank of New York of buying rates of exchange in the New York market.

The Court of Customs and Patent Appeals gave no consideration to this significant change of policy. Its decision would restore to the Secretary of the Treasury the same discretionary power with respect to foreign exchange rates which the Congress specifically gave to him in the proviso to the Act of 1894 and specifically took away in the Act of 1921.

In Section 522 of the Tariff Act of 1930 Congress has provided—

- (1) That the values of foreign coins shall be estimated by the Director of the Mint and be proclaimed by the Secretary of the Treasury;
- (2) That for the purpose of assessment and collection of duties, whenever it is necessary to convert foreign exchange into currency of the United States, such conversion shall be made at values *proclaimed by the Secretary*;

- (3) If no such value has been proclaimed or if such value varies by more than 5 per centum from the buying rate in the New York market at noon on the day of exportation, conversion *shall be made at a value measured by the buying rate*;
- (4) The ~~buying rate~~ is defined to be the buying rate for cable transfers payable in the foreign currency to be converted;
- (5) Such buying rate is required to be determined by the Federal Reserve Bank of New York, and in ascertaining such rate the Federal Reserve Bank may in its discretion take into account certain enumerated factors; and
- (6) The Federal Reserve Bank is to certify such rate daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary.

Clearly under the statutory scheme Congress intended that in cases where buying rates are applicable, the rate to be used should be that determined by the Federal Reserve Bank. The determination of buying rates requires skill and the exercise of judgment and discretion. The whole subject is confided by the law exclusively to the discretion of the Federal Reserve Bank and unless its determinations are given full force and effect, the entire statutory purpose is defeated. The Federal Reserve Bank is the instrumentality selected by the Congress to determine buying rates, and such buying rates are binding on the Secretary, the Collector, and on importers, just as binding as the specific rates fixed by Congress in the various enactments prior to 1873. If any error in adopting a wrong standard, rule or mode of computation is alleged to have been committed, there is but one method of correction, that is, to appeal to the Bank to modify its determination.

The Secretary of the Treasury, by the instructions to Collectors of Customs to use *only* the "official" rate of ex-

change, has sought to set aside and nullify the "free" rate of exchange for pounds sterling found by the Federal Reserve Bank. The express provisions of existing law clearly give him no such authority, and the prior legislation and decisions of this court lead inevitably to the conclusion that buying rates of exchange, duly determined and certified by the Federal Reserve Bank, must be given force and effect in any case where the currency of an involved invoice and the facts of a particular case require application thereof.

Neither the "free" rate nor the "official" rate may be suppressed or disregarded or set aside. Each of the rates has vitality and force and each is tied up with certain classes or types of merchandise—the "official" rate with whiskey, tin, furs, rubber, and jute, required under British regulations to be paid for in pounds sterling acquired at that fixed rate from the Bank of England or an authorized agent of the Bank of England, and the "free" rate with all other merchandise exported to the United States, including the woolen goods here involved, which were not restricted by British regulations and were paid for by pounds sterling acquired at the free and uncontrolled rate of exchange.

Prior to March 25, 1940, the effective date of the British regulation requiring whiskey, furs, tin, rubber, and jute to be paid for with pounds sterling acquired at the "official" rate, an importer in the United States of *any class of goods* could pay for such goods with pounds sterling bought at the free and uncontrolled buying rate for cable transfers in the New York market. At that time, for purposes of Section 522 (c), a single buying rate was determined and certified daily by the Federal Reserve Bank.

On and after March 25, 1940, when the above mentioned British regulation became effective, the Federal Reserve

Bank for the first time began to certify a second buying rate for pounds sterling, which it denominated "official", meaning the rate fixed by the British Government. The Federal Reserve Bank continued also to certify the single rate it had theretofore certified and denominated such rate "free".

As early as September 3, 1939, the British Government had established an "official" rate of exchange for conversion of pounds sterling and dollars in the United Kingdom. From September 3, 1939 to September 13, 1939 the rate was \$4.06 per pound sterling; from September 14, 1939 to January 7, 1940, \$4.04 per pound sterling; and from January 8, 1940 to the present time, \$4.035 per pound sterling. Stipulation Par. 3 (R. p. 89). The Federal Reserve Bank certified such "official" rate, however, only when that rate became of direct concern in the application of Section 522 (c) through the use of pounds sterling obtained at such "official" fixed rate in payment for whiskey, furs, tin, rubber, and jute exported to the United States. Such action was a clear and definite recognition by the Federal Reserve Bank that on and after March 25, 1940, the currency of the invoice of whiskey, furs, tin, rubber, and jute must represent payment in pounds acquired at the fixed "official" rate, and therefore the "official" rate was certified to form the basis for conversion of the currency of the invoice of such products. At the same time the Federal Reserve Bank continued to certify the "free" rate of exchange to form the basis for conversion of the currency of the invoice of all other merchandise imported from the United Kingdom which was purchased with pounds acquired at the "free" rate.

The two rates of exchange had distinct and different applications. The "free" rate could not properly have been used to convert the currency of any invoice of whiskey, furs, tin, rubber, and jute bought with "official" pounds, and the "official" rate could not properly have been used to

convert the currency of any invoice of other merchandise bought with "free" pounds, any more than a certified rate for Mexican dollars could properly have been used to convert an invoice covering merchandise bought with Tientsin dollars.

In this view each rate of exchange is given full force and effect and the requirements of the statute are fully satisfied.

The Court of Customs and Patent Appeals stated that in its opinion Section 522 (c) contemplates the finding of a single buying rate of exchange and that if Section 522 (c) were to be construed to mean that any number of buying rates on the New York market could be certified by the Federal Reserve Bank of New York, the ultimate result would be "confusion worse confounded" (R. p. 127). In the case at bar there were two buying rates determined and certified by the Federal Reserve Bank and there is no evidence whatever of confusion on the part of customs officers regarding their application.

The facts herein establish that the certification and use of both rates was necessary to effectuate the clear purpose of Congress as expressed in Section 522 (c) that the buying rate of exchange to be used in converting a particular foreign currency should be the rate which reflected the purchase of cable transfers payable in the foreign currency to be converted. In the case at bar that rate was the "free" buying rate.

While it is true Section 522 (c) speaks of "the buying rate", it is well settled that when necessary to give effect to the legislative intent, words importing the singular only will be applied to the plural of persons and things. This general rule is stated as follows in U. S. Revised Statutes, Section 1:

Sec. 1. In determining the meaning of any Act or resolution of Congress, words importing the singu-

lar number may extend and be applied to several persons or things * * *

U. S. Revised Statutes, Section 1, U. S. C., Title 1, Section 1.

See also:

United States v. Oregon & California R. Co., 164 U. S. 526, 541; *Muller v. Norton*, 132 U. S. 501, 508.

If the Federal Reserve Bank, in the exercise of the discretion granted to it by Section 522 (c), deemed it necessary in order to effectuate the purposes of the enactment to certify two rates for the British pound, such action on its part would seem clearly to come within the provisions of Section 1 of the Code above cited, especially in view of the fact that there is nothing in the statutes appertaining to the subject in question which would appear to limit or negative the right of the Bank to take such action. However, petitioner submits that if this court shall finally determine that the Federal Reserve Bank had authority under the facts of this case to determine and certify but one rate of exchange for pounds sterling, the single rate which must then be given force and effect is the "free" buying rate for the reasons that, first, the so-called "free" rate is the free and uncontrolled rate for cable transfers in the New York market certified by the Federal Reserve Bank under Section 522 (c) prior to March 25, 1940. See Exhibit 6 (R. p. 128, offered R. p. 42). Second, the "official" rate is a rate fixed and controlled by the Government of Great Britain. Its very character seems at variance with the purpose of the Congress in defining a buying rate under Section 522 (c). That statute clearly contemplates a fluctuation in the buying rates based upon free and uncontrolled transactions in the New York market, and hence noon was fixed as the time at which a rate should be determined. That a free and uncontrolled rate was intended by the Congress is further evidenced by the provi-

sion in Section 522 (c) that the Federal Reserve Bank might in its discretion take into consideration the "last ascertainable transactions and quotations" and, if there was no market buying rate, calculate the rate "from actual transactions and quotations in demand or time bills of exchange." No force and effect can be given to these latter statutory directions if a fixed and controlled rate of exchange be adopted under Section 522 (c). *If the Court of Customs and Patent Appeals is right, therefore, in its decision that only one rate may be determined and certified by the Federal Reserve Bank, then the rate which must be given force and effect is the "free" buying rate of exchange.*

It is petitioner's primary position, however, that the action of the Federal Reserve Bank in determining and certifying both an "official" rate and a "free" rate must be given full force and effect and its judgment as to the existence of the facts calling for that action is not subject to review.

As stated by this court in *United States v. Bush & Co.*, 310 U. S. 371, at page 380:

"It has long been held that where Congress has authorized a public officer to take some specified legislative action when in his judgment that action is necessary or appropriate to carry out the policy of Congress, the judgment of the officer as to the existence of the facts calling for that action is not subject to review. [Citing cases.] As stated by Mr. Justice Story in *Mott v. Mott*, *supra* (12 Wheat. (U. S., 31, 32, 6 L. ed. 541): 'Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts.'"

Congress has authorized the Federal Reserve Bank to determine buying rates of exchange and to exercise its discretion in the determination thereof. The Federal Re-

serve Bank, in carrying out the policy of Congress as expressed in Section 522 (c), found as a fact that a "free" buying rate and an "official" buying rate for cable-transfers payable in pounds sterling, existed in the New York market, and that each of such exchange rates was applicable to distinct classes of commodities in payment for which such cable transfers were to be employed.

Such determination and certification is a conclusive finding by the fact-finding body designated by the Congress that in the case of British currency two separate things exist for the purposes of Section 522 (c), namely, an "official" rate for pounds used for the purchase of whiskey, tin, furs, rubber, and jute, and a "free" rate used for the purchase of all other types of merchandise, including woolens.

The Collector of Customs converted the currency of the instant invoice at a rate of exchange not properly applicable to the imported woolens. The buying rate which should have been used is the rate certified by the Federal Reserve Bank as "free"—the rate of currency or type of currency in which such woolens were purchased and paid for.

IV

The imported woolens were purchased and paid for with pounds sterling convertible at the "free" rate of exchange.

The stipulation filed herein, Par. 10 (R. p. 90) recites that the pounds sterling used in the purchase of the imported woolens were purchased through the Guaranty Trust Company of New York in the New York market for cable transfer on May 22, 1940 at \$3.21 and that on that date the Federal Reserve Bank certified to the Secretary of the Treasury a rate for the "free" pound of \$3.227187. Said stipulation further states that such pounds sterling were not obtained directly or indirectly from the

Bank of England or an authorized dealer of that bank as defined in the British Finance Regulations, Exhibit 3 [2] herein (R. pp. 106, 109, offered, R. p. 41).

There is, of course, a slight difference in the amounts stipulated to have been paid for the pounds used in the purchase of the imported woolens and the "free" rate certified by the Federal Reserve Bank on the date of such purchase. However, under the statute, the Federal Reserve Bank is required to certify the buying rate in the New York market at noon. Necessarily in the free and uncontrolled market for such pounds, the price paid therefor would vary to some extent in the course of a day. If pounds covered by the Federal Reserve "official" rate were obtainable only at \$4.035 and on the day on which the involved pounds were purchased the Federal Reserve Bank certified a "free" rate of \$3.22, the fact that the involved pounds were purchased at \$3.21 establishes that the currency of the invoice here involved was in pounds sterling which were convertible at the "free" rate.

Additional facts of record establish that the pounds sterling here involved were not obtained from the only two sources from which "official" pounds sterling could be acquired, to wit, the Bank of England or an authorized dealer of that Bank. Such pounds were therefore not "official" and perforce must have been of the type covered by the Federal Reserve certification "free".

The Court of Customs and Patent Appeals did not pass directly on this point. In its opinion, however, that court said that anything in Great Britain could be purchased with pounds sterling converted at the "official" rate and that such was not the case with "free" pounds (R. p. 152). The question whether pounds sterling acquired at the "free" rate could be used for all purposes or whether pounds sterling acquired at the "official" buying rate could be used for all purposes seems to rest wholly in the field of speculation. However, the record demonstrates that the pounds acquired at the "free" rate could

be used in payment for all merchandise exported from the United Kingdom except whiskey, furs, rubber, tin, and jute, and specifically that woolens such as those herein could be purchased with pounds sterling obtained at such "free" rate (R. pp. 74, 77).

If it be argued that the "official" buying rate used by the Collector represents a value established by the Government of Great Britain, the answer is that insofar as all exports to the United States except whiskey, furs, tin, rubber, and jute, are concerned, pounds acquired at the "free" buying rate were recognized and formed the medium of payment between the manufacturer or shipper in the United Kingdom and the importer in the United States. Certainly the fact, if it be a fact, that the "official" buying rate was the only rate fixed by the United Kingdom in the United Kingdom can not operate to override and set at naught the "free" buying rate of exchange in the New York market determined by an official agency of the United States Government, to wit, the Federal Reserve Bank, acting under laws of the United States.

The imported woolens were purchased and paid for in pounds sterling convertible at the "free" rate of exchange and the invoice currency should accordingly have been converted at the "free" rate determined and certified by the Federal Reserve Bank for the date of exportation herein, to wit, \$3.475138.

CONCLUSION

It is respectfully submitted that the decision below should be reversed.

ALBERT MACC. BARNES,
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EUGENE F. BLAUVELT,
of Counsel.

New York, November 27, 1944.

Appendix

Section 522, Tariff Act of 1930

(46 Stat. 739; U. S. C., Title 31, Sec. 372).

Sec. 522. Conversion of Currency.

(a) Value of Foreign Coin Proclaimed by Secretary of Treasury.—Section 25 of the Act of August 27, 1894, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," as amended, is reenacted without change as follows:

"Sec. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year."

(b) Proclaimed Value Basis of Conversion.—For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of the enactment of this Act, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of section 25 of such Act of August 27, 1894, as amended, for the quarter in which the merchandise was exported.

(c) Market Rate When No Proclamation.—If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value meas-

Appendix.

ured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange.

Section 514, Tariff Act of 1930

(46 Stat. 739, U. S. C., Title 19, Sec. 1514).

SEC. 514. PROTEST AGAINST COLLECTOR'S DECISIONS.

Except as provided in subdivision (b) of section 516 of this Act (relating to protests by American manufacturers, producers, and wholesalers), all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback, or his refusal to reliquidate any entry for a clerical error discovered within one year after the date of entry, or within sixty days after liquidation or re-

Appendix.

liquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the collector upon any question not involved in such reliquidation.

Treasury Decision 50134 of April 15, 1940

(Treasury Decisions, Vol. 75, p. 370; 5 Fed. Reg. 1447)

Conversion of currency—Canadian dollars, Newfoundland dollars, English pounds, Australian pounds

Conversion rate for customs purposes of Canadian dollar, Newfoundland dollar, English pound and Australian pound

Treasury Department, April 15, 1940.

To Collectors of Customs and Others Concerned:

Reference is made to the daily buying rates for foreign exchange which section 522(c) of the Tariff Act of 1930 (U. S. C. title 31, sec. 372(c)) directs the Federal Reserve

Appendix.

Bank of New York to certify to the Secretary of the Treasury. The list of rates certified by the Federal Reserve Bank of New York has included two rates for the Canadian dollar and the Newfoundland dollar since March 22, 1940, two rates for the English pound since March 25, 1940, and two rates for the Australian pound since April 1, 1940. In each case the higher rate has been designated "Official", the other "free".

Whenever it is necessary to convert any of the above-mentioned currencies into currency of the United States for the purpose of the assessment and collection of duties upon imported merchandise, customs officers shall make such conversions on the basis of the rate designated "official," unless the rate proclaimed for the respective currency pursuant to section 522(a) of the Tariff Act of 1930 (U. S. C. title 31, sec. 372 (a)) varies from such "official" rate by less than 5 per centum. In the latter event the proclaimed rate should be used.

Until further notice only the "official" rates for the named currencies will appear in the weekly issues and bound volumes of the Treasury Decisions. The pertinent facts and circumstances will be kept under review and, should future developments make it advisable, further instructions will be given.

H. MORGENTHAU, JR.,
Secretary of the Treasury.

Treasury Decision 50146 of May 11, 1940

(Treasury Decisions, Vol. 75, p. 388)

Foreign currencies—Rates of exchange

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York.

Appendix.

Treasury Department,
Office of the Commissioner of Customs,
Washington, D. C., May 11, 1940.

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 522 (c), Tariff Act of 1930, during the period from May 3 to 9, 1940, inclusive, is published for the information of collectors of customs and others concerned.

By direction of the Commissioner:

W. R. JOHNSON,
Deputy Commissioner of Customs.

Values of foreign currencies certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under provisions of section 522 (c), Tariff Act of 1930:

Period May 3 to 9, 1940, Inclusive

Country	Name of currency	May 3	
		Dollars	****
Europe:			* * *
England	Pound sterling	(*) 4.035000	* *

(*) (Official or Controlled.) * * * The rates for Canadian dollars, Newfoundland dollars, English pounds, and Australian pounds included in this list are for use pursuant to the directions in W. D. 50134.

*Appendix.***Section 61, Act of March 2, 1799**

(1 Stat. 673)

* * * *Provided*, that it shall be lawful for the President of the United States, to cause to be established fit and proper regulations for estimating the duties on goods, wares and merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency, issued and circulated under authority of any foreign government.

Customs Regulations 1874, Article 993

ARTICLE 993. The invoice values of foreign merchandise imported into the United States shall hereafter be reduced to the money of account of the United States, that is to say, the standard gold dollars of 25-8/10 grains troy, total weight, and nine tenths, or 23-22/100 grains troy weight, of pure gold, in accordance with the rates of value, determined as required by law, and in the following manner:

First. Where the standard value of a foreign currency has been proclaimed by the Secretary of the Treasury, in the manner provided by law, that value is to be taken in all cases in estimating customs duties, unless collectors have been otherwise instructed, or unless a depreciation of the value of the foreign currency expressed in an invoice, from the standard of that currency, shall be shown by consular certificate thereunto attached.

Secondly. Where the standard value of a foreign currency has not been proclaimed by the Secretary of the Treasury, in the manner provided by law, an invoice expressed in such currency must be accompanied by a consular certificate, showing its value in standard gold dollars of the United States.

*Appendix.***Table 1****Statutes Establishing Values or Revising or
Repealing Values 1789 to 1873**

- Act of July 31, 1789, Sec. 18, 1 Stat. 41;
 Act of September 29, 1789, Sec. 3, 1 Stat. 95;
 Act of August 4, 1790, Sec. 40, 1 Stat. 167;
 Act of August 4, 1790, Paragraph 2 of Sec. 74 and Sec.
 75, 1 Stat. 178;
 Act of March 3, 1791, 1 Stat. 215;
 Act of May 2, 1792, Sec. 17, 1 Stat. 262;
 Act of March 2, 1799, Sec. 61, 1 Stat. 673;
 Act of March 3, 1801, Secs. 1 and 2, 2 Stat. 121;
 Act of July 27, 1842, Secs. 1 and 2, 5 Stat. 496;
 Act of March 3, 1843, 5 Stat. 625;
 Act of March 3, 1845, 5 Stat. 740;
 Act of May 22, 1846, 9 Stat. 14;
 Act of March 2, 1861, 12 Stat. 207.

Table 2**Statutes in Force 1873 to 1894 Inclusive**

- Act of March 3, 1873, 17 Stat. 602;
 U. S. Revised Statutes, Secs. 3564, 3565;
 Act of Oct. 1, 1890, Sec. 52, 26 Stat. 524;
 Act of Aug. 27, 1894, Sec. 25, 28 Stat. 552.